

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of CASSANDRA CREGER and  
BENJAMIN CREGER, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHRISTINA DAIN,

Respondent-Appellant.

UNPUBLISHED  
February 11, 2010

No. 292658  
Jackson Circuit Court  
Family Division  
LC No. 07-005785-NA

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Before: K.F. Kelly, P.J., and Jansen and Zahra, JJ.

PER CURIAM.

Respondent-appellant appeals as of right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist) and (g) (failure to provide proper care or custody). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent had a learning disability and first argues on appeal that petitioner did not provide services designed to reasonably accommodate her, thereby destining her to fail and making termination of her parental rights inevitable. The reasonableness of services provided is relevant to the sufficiency of evidence for termination of parental rights. *In re Newman*, 189 Mich App 61, 66-69; 472 NW2d 38 (1991).

The conditions leading to adjudication were environmental neglect and an inability to properly feed, clothe, parent and protect her children, which constituted failure to provide proper care or custody. More than 182 days elapsed between Cassandra's July 17, 2007 initial disposition and the June 2, 2008 termination of respondent's parental rights, and slightly fewer than 182 days elapsed between Benjamin's January 14, 2008 initial disposition and the June 2, 2008 termination.

This child protective proceeding spanned two years. The evidence showed respondent received services for two months before Cassandra's removal, including in-home Families First

services and hands-on instruction from a nurse through Maternal and Infant Support Services. Respondent's learning disability was identified in the psychological evaluation conducted shortly after Cassandra's removal, and was evident to her caseworkers. During the first year of the proceeding there was little evidence showing petitioner acted to accommodate respondent's disability. Respondent complete all services requested of her, and thus apparently knew what was expected. However, respondent's learning disability was addressed midway through the proceeding at the June 4, 2008 permanency planning hearing, after which the trial court ordered an assessment of her capacity to parent by an independent family therapist, hands-on parenting instruction at visits with the children, and individual counseling. Even after the family therapist unequivocally opined that respondent lacked capacity to parent even with assistance, the termination hearing was postponed to allow for the family therapist's additional observation of respondent's abilities during visits with the children.

Respondent's counselor, who did not observe respondent interact with the children, testified that respondent articulated proper parenting concepts, but the counselor did not know whether respondent could apply them. She testified that respondent "possibly could" benefit over time from daily, more intensive hands-on instruction, such as that provided by reunification agencies, but she could not estimate how much time respondent might require to internalize and apply basic parenting skills. Testimony provided by those who observed visits between respondent and the children, including the family therapist, parenting instructor, caseworker and case aide, clearly indicated respondent was unable to independently parent the children, and would not become able to do so within a reasonable time. The family therapist added that respondent lacked the capacity to effectively parent even with assistance. Although respondent's plan was to reside with a relative who would provide financial and parenting assistance, relatives were not approved for that purpose by the time of the termination hearing.

Respondent's disability was permanent and her need for constant supervision and assistance in parenting as the children entered new phases of development would continue until the children became independent. Given clear evidence of respondent's inability to learn proper parenting skills despite hands-on modeling both before removal and after the permanency planning hearing, the trial court did not err in terminating her parental rights pursuant to §§ 19b(3)(c)(i) (conditions of adjudication continue to exist), and (g) (failure to provide proper care or custody).

Further, the evidence showed that termination of respondent's parental rights was clearly in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Although the trial court heard conflicting evidence regarding whether the children were bonded to respondent, the trial court's finding that a parent-child caretaking bond was not formed is supported by evidence that Cassandra was removed from respondent's care at two months of age and that Benjamin never resided with respondent. Further, given there was no reasonable likelihood respondent would be able to parent the children within a reasonable time, the trial court did not err in finding permanency with adoptive families in the children's best interests.

Respondent also argues she was denied effective assistance of counsel because her attorney failed to demand services to accommodate her learning disability, thus depriving her of a fair trial. She raises this issue for the first time on appeal, and it is not preserved. *People v Cicotte*, 133 Mich App 630, 636; 349 NW2d 167 (1984); *People v Ginther*, 390 Mich 436, 443;

212 NW2d 922 (1973). In the absence of an evidentiary hearing in the trial court, review on appeal is limited to mistakes apparent on the lower court record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002).

The evidence showed counsel for respondent advocated for accommodation of respondent's learning disability at the June 4, 2008 permanency planning hearing and at later hearings, and that the trial court ordered assessment of respondent's parenting capacity, hands-on parenting instruction and individual counseling. To establish a claim of ineffective assistance of counsel, respondent is required to show that her attorney's performance was prejudicially deficient, and that under an objective standard of reasonableness the attorney made an error so serious that counsel was not functioning as an attorney as guaranteed under the Sixth Amendment. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052, 80 L Ed 2d (1984).

Respondent's learning disability was evident to her service providers, counsel argued for accommodation of it, and the trial court ordered services designed to accommodate it. Although counsel also argued for additional, daily, in-home intensive reunification services, they were not ordered because reunification was not possible. Counsel did not make any error prejudicing the outcome of the termination hearing, and respondent was not denied effective assistance of counsel.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Kathleen Jansen  
/s/ Brian K. Zahra